

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Negotiated Channel Election Arrangements	)	MM Docket No. 03-15
	)	
Second Periodic Review of the	)	
Commission's Rules and Policies	)	RM 9832
Affecting the Conversion to	)	
Digital Television.	)	

To: The Commission

**REPLY TO OPPOSITION TO JOINT APPLICATION FOR REVIEW**

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The Media Bureau arbitrarily rejected a negotiated agreement between a noncommercial broadcaster and a commercial television station that would have facilitated both stations' transition to digital (and continued NBC network access by millions of viewers). The Media Bureau's primary reason for rejecting the negotiated agreement was not because it impermissibly affected the present rights of another broadcaster in the market or elsewhere, but because of the speculative claim by ABC, Inc. ("ABC") that the negotiated agreement removed one of multiple channel alternatives available to be selected by an ABC-owned station in a later election round. The Commission should reverse the Bureau's decision because the Bureau's rejection of the agreement was in ABC's, not the public's, interest.

**I. INTRODUCTION AND SUMMARY**

The Joint Application for Review submitted by Independence Public Media of Philadelphia, Inc. ("Independence") and NBC Telemundo License Co. ("NBC Telemundo") in the above-referenced proceeding presents a case of first impression to the Commission that requires immediate resolution to ensure that millions of viewers in the nation's fourth-largest television market do not lose NBC network service as the result of the digital transition and to

provide urgently needed clarity for the upcoming second and third election rounds. The Commission has encouraged parties to make use of negotiated channel agreements (“NCAs”) to resolve channel election issues because of their “beneficial results for the marketplace and consumers.”<sup>1</sup> With this encouragement, NBC Telemundo entered into an NCA with a Philadelphia-area noncommercial broadcaster, Independence, to use the latter’s digital allotment as the NBC station’s post-transition digital allotment. Under the NCA, Independence would return to its existing analog allotment for post-digital transition operations to continue its unique, locally-oriented programming service, and the NBC station would use Independence’s current digital allotment to resolve technical obstacles created by the FCC’s prior approval of maximization applications for DTV channels for other stations.

At the urging of ABC, however, the Media Bureau improperly rejected the NCA at issue here.<sup>2</sup> As demonstrated by the parties’ prior pleadings, the Bureau rejected the NCA based on an erroneous, unjustified and unworkable interpretation of the meaning of “adverse impact” for purposes of assessing NCAs, which sweeps within its purview any NCA that removes an unclaimed digital channel from the pool of channels potentially available in subsequent election rounds. Because this interpretation could not have been what the Commission intended when it authorized the use of NCAs, the Commission should act quickly to (i) clarify the proper scope of the “adverse impact” standard so that parties contemplating NCAs as part of the second and third round of elections will have clear guidance concerning the channels potentially available to

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<sup>1</sup> *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, 19 FCC Rcd 18279 (2004) (“*Second Report and Order*”).

<sup>2</sup> *Negotiated Channel Election Arrangements*, Report and Order, DA 05-1619, ¶¶ 14-16, 25 (rel. June 8, 2005) (“*Bureau Order*”).

them; (ii) deny the Opposition to the Joint Application for Review (“Opposition”) filed by ABC; and (ii) apply the proper standard to the NCA at issue here and promptly approve it.<sup>3</sup>

## **II. THE NCA AT ISSUE HERE ACCOMPLISHES WHAT THE COMMISSION ENVISIONED WHEN IT ENCOURAGED THE USE OF SUCH TOOLS TO FURTHER THE DIGITAL TRANSITION.**

As the Commission is well aware, NBC Telemundo, licensee of Station WCAU, Philadelphia, Pennsylvania (NTSC channel 10/DTV channel 67), was faced with an untenable digital channel election as it approached the February 10, 2005, first round election deadline: Its assigned digital channel was out-of-core and its analog channel had been rendered unusable for digital operation by prior Commission actions.<sup>4</sup> In an effort to resolve this dilemma and continue to serve its community of license, NBC Telemundo entered into the NCA at issue here, which provides that, post-transition, Independence will operate digitally on its current analog channel (35) and NBC Telemundo will operate digitally on Independence’s relinquished digital channel (34). Station WNJU, Linden, New Jersey, was a party to the NCA due to the potential impact of the arrangement on WNJU-DT’s proposed operation on its assigned digital channel 36. Based on the Commission’s historical processing procedures, Independent and NBC Telemundo concluded that no other stations would be adversely affected by the NCA under the standard

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<sup>3</sup> Because of the need for an expedited Commission-level resolution of the novel issues presented by this proceeding, ABC’s argument that the parties first should have sought reconsideration from the Bureau must be rejected. *See* Opposition at 11.

<sup>4</sup> The Media Bureau, with full knowledge that WCAU could not remain on its out-of-core channel, authorized (over NBC Telemundo’s objections) nearby WHTM-DT, Harrisburg, Pennsylvania, to change its digital channel from 57 to 10. *See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Harrisburg, Pennsylvania)*, 17 FCC Rcd 22673 (MB 2002). WHTM-DT has since been constructed, maximized, and licensed on channel 10. This action, coupled with WBPH-DT’s maximized facilities on channel 9 at Bethlehem, Pennsylvania, has eliminated any possibility for NBC Telemundo to utilize WCAU’s analog channel 10 in the post-transition period, because the station would have to operate with such low power that millions of its current viewers would no longer receive the station’s signal. Worse yet, assessing coverage at a reasonable signal level for indoor antennas, such as 56 dBu, reduces the predicted interference-free coverage of WCAU-DT on channel 10 to nearly zero. *See* Joint Application for Review, Engineering Statement at 2.

articulated by the Commission in the *Second Report and Order*.<sup>5</sup> Therefore, Independence and NBC Telemundo made their first round channel elections in conformance with the NCA and so advised the Commission in their first round election forms. The NCA thus furthered the Commission's goal of reducing the number of stations that must be accommodated in the second and third election rounds while ensuring that millions of viewers in the Philadelphia market are not deprived of NBC network service. In addition to resolving NBC Telemundo's untenable digital channel situation, the NCA provided for a variety of largely in-kind support measures to assist Independence – a noncommercial broadcaster – in making the transition to a full digital facility.<sup>6</sup>

Despite the obvious public benefits of the NCA, ABC, the licensee of WPVI-TV, Philadelphia, Pennsylvania (NTSC channel 6/DTV channel 64), objected to the NCA on the ground that, following its round one relinquishment of channel 6, its channel election "rights" were adversely affected by the NCA. Because ABC had no rights to either of the channels addressed in the NCA, however, the Bureau should have dismissed its objection and approved the NCA. Instead, the Bureau improperly modified the "adverse impact" standard set forth in the *Second Report and Order* and applied that erroneous standard to justify rejection of the NCA.

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<sup>5</sup> Months after the first round election deadline, the Media Bureau implemented an unannounced change in the processing software for interference analyses, which was not made available on the FCC's website until June 14, 2005. See Joint Application for Review and Engineering Statement attached thereto. Based on that software and a revised directional antenna pattern, WYBE is able to fully protect the two stations identified in the *Bureau Order* (WDCA and WITF-TV), which ABC does not dispute. Opposition at 11. See Part IV *infra* for further discussion of interference matters.

<sup>6</sup> See Joint Application for Review at 8-11.

**III. THE BUREAU'S INTERPRETATION OF "ADVERSE IMPACT" IS UNWORKABLE AND CONTRARY TO THE COMMISSION'S INTENT IN THE SECOND REPORT AND ORDER.**

When the Commission encouraged parties to use negotiated channel arrangements as a way of resolving channel election issues, it also cautioned that such arrangements "are subject to Commission approval, including particular consideration of the effect on the channel election rights of, and interference impact on, any licensee not a party to the negotiated channel election agreement. . . . Stations involved in the negotiated channel election arrangement must satisfy our DTV interference rules with regard to their relationship to other stations not involved in the negotiated arrangement."<sup>7</sup> In a subsequent public notice released on February 1, 2005, the Media Bureau restated the standard: "[A]ll such arrangements are subject to Commission approval and may be rejected if they propose the acceptance of a significant level of interference or loss of service or are otherwise inconsistent with the public interest. If, after review of the record, . . . we find that the NCA reasonably could be construed to have an adverse impact on the interests of a station not a party to the NCA, or is otherwise not in the public interest, the NCA will be rejected."<sup>8</sup>

Thus, parties proposing to enter into NCAs were given two choices: Either comply with the DTV interference rules with respect to stations not party to the NCA or negotiate an appropriate interference agreement with such stations as a component of the NCA. But these alternative requirements included only stations with actual present rights to the affected channels and in no way obligated stations subject to NCAs to include as parties all stations that might

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<sup>7</sup> *Second Report and Order*, ¶ 45 & n. 92.

<sup>8</sup> FCC Public Notice, *DTV Channel Election Issues – Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC Form 381 Certifications, and Notification to FCC of Flash Cut Decisions*, 20 FCC Rcd 2108 (2005). See also FCC Public Notice, *DTV Channel Election Issues – Negotiated Channel Arrangements and Procedures for Filing Associated Pleadings*, 20 FCC Rcd 4222 (2005).

have a speculative future interest in one or more of the channels. Otherwise, no NCA could ever be sufficiently inclusive, because it would be impossible for any party to determine whether another station might have a speculative future interest in any particular channel. Such protection of other stations' "future" interests also is contrary to many other Commission policies and practices regarding station operations, including, for example, the rationales underlying the Commission's long-standing "first in time" policy, which ensures that a station's application must protect only the current or already applied-for operations of other broadcasters, not how those broadcasters may choose to operate in the future.<sup>9</sup> That policy, which is based on fundamental fairness and concerns over warehousing spectrum, should be just as applicable here; because there is no way to know that ABC would choose channel 34 or 35 if available, preclusion of the NCA because of ABC's claims effectively permits ABC to "warehouse" channel options while denying NBC Telemundo access to the channel to which it is ready and willing to commit.

NBC Telemundo and Independence heeded the Commission's caution and took steps to ensure that no stations with rights to channels 34 or 35 (i.e., by virtue of current analog or digital operation or digital channel assignments) would be adversely affected by the proposed digital operation of WCAU and WYBE on channels 34 and 35, respectively, and that no other stations not party to the agreement would receive unacceptable interference from such operations.<sup>10</sup> ABC, as a licensee operating on NTSC channel 6 and DTV channel 64, was not subject to any

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<sup>9</sup> The policy was first articulated in 1947 and has been followed consistently since then. See *Midnight Sun Broadcasting Co.*, 11 F.C.C. 1119 (1947). The policy was reiterated and applied most recently in *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for Narrowband Private Land Mobile Radio Channels in the 150.05-150.08 MHz, 162-174 MHz, and 406.1-420 MHz Bands that are Allocated for Federal Government Use*, Report and Order, 20 FCC Rcd 5793 (2005). See also *Sudbrink Broadcasting of Georgia*, 65 F.C.C.2d 691 (1977).

<sup>10</sup> As noted above, the parties' interference analysis was based on the Commission's historical processing software, which was very recently changed, thus requiring a minor modification of the proposed directional antenna pattern for WYBE on DTV channel 35 to ensure interference protection.



interference from the proposal and had no rights to either of the channels addressed in the NCA. Accordingly, ABC was not required to be included as a party to the NCA. ABC's objection to the NCA argued that by removing Independence's channels 34 and 35 from the possible pool of channels available to ABC, the NCA "adversely affected" ABC's rights to one of those channels and therefore could not be approved.<sup>11</sup> The Bureau accepted ABC's expansive view of its rights to channels that it may want to try to select in the future – even though ABC, like all other broadcasters in the Philadelphia DMA *except* Independence, had no rights to either channel 34 or channel 35 – and rejected the NCA primarily on that basis.<sup>12</sup>

As the parties demonstrated in the Joint Application for Review and in their Joint Reply to the ABC Objection, the Bureau's interpretation of the scope of channel election rights for purposes of negotiated channel agreements must be rejected because it includes not only the NTSC and DTV channels actually assigned to the parties to the NCA but also *any* possible future preferences of non-party stations for channels being relinquished to one of the parties pursuant to the terms of the NCA.<sup>13</sup> The Commission could not have intended this wholly unworkable result when it encouraged stations to negotiate channel arrangements. The Bureau's interpretation would require parties to NCAs to have engaged in pure speculation about the possibility that other stations – either in their market or, because of the far-reaching effects of interference and daisy-chain issues, well outside their market – might have an interest in the channels subject to the NCA. This interpretation could require an indeterminable number of stations in adjacent or even more distant markets also to be included as parties to an NCA before any NCA could be

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<sup>11</sup> Objection of ABC, Inc. (filed Mar. 15, 2005) ("ABC Objection").

<sup>12</sup> As noted, the Bureau also raised an interference concern that has been fully addressed by the parties. *See* Part IV *infra*.

<sup>13</sup> *See* Joint Application for Review at 7-8.

acceptable. Far from expediting the resolution of channel assignments, as the Commission envisioned, such a reading of “adverse impact” could result in an endless daisy chain of stations, including those stations subject to the NCA and those that *might* have an interest in operating on an affected channel in the post-transition period.<sup>14</sup> This chain could be broken only by a complex, time-consuming, multi-party channel allotment proceeding – precisely the result the Commission sought to avoid with its invitation to utilize NCAs for final channel assignments. The Bureau’s distortion of the “adverse affect” standard compels this result, however, and therefore the Commission should reject the Bureau’s interpretation.

**IV. GRANT OF THE NCA WILL SIMPLIFY THE REPACKING PROCESS, WHICH AFFORDED ABC – BUT NOT NBC TELEMUNDO – MULTIPLE OPPORTUNITIES TO ELECT A FINAL DIGITAL CHANNEL.**

ABC – like NBC Telemundo – has been assigned an out-of-core channel for its digital operations. ABC has an advantage that is not available to NBC Telemundo, however: Because its analog station operates on a low VHF channel, ABC was entitled to *tentatively* elect its analog channel for its permanent DTV operations *and* retain the subsequent ability to select a different channel in round three. ABC chose not to follow this option and instead voluntarily released a viable analog channel – a channel that would have allowed WCAU to replicate its certified DTV coverage – in order to participate in the second round of DTV elections.<sup>15</sup> Unlike ABC, NBC Telemundo did not have the option of selecting its current analog channel for WCAU’s permanent DTV operations;<sup>16</sup> nor does NBC Telemundo have the special right afforded to low VHF stations to select different channels in round three. Instead of recognizing and

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<sup>14</sup> Indeed, the Bureau rejected one such challenge in which an out-of-market station not a party to an NCA objected on the ground that it might have a future interest in a channel subject to the NCA. *See Bureau Order*, ¶ 5.

<sup>15</sup> *See* Joint Application for Review, Engineering Statement at 2.

<sup>16</sup> As described above and in the earlier pleadings, the Commission’s prior actions have rendered channel 10 unusable for digital operations in Philadelphia.

accommodating these key factual differences, the *Bureau Order* creates a conflict for the second round of elections, which is precisely what NCAs and the channel election process are meant to avoid. If the *Bureau Order* is reversed, however, and the NCA approved, one less station will be required to participate in round two, which ultimately will simplify and streamline the repacking process. Reversal of the *Bureau Order* also will afford the Commission the opportunity to clarify the “adverse impact” standard in a manner that will preserve the benefits of negotiated channel agreements for the upcoming election rounds.

**V. GRANT OF THE NCA WILL NOT RESULT IN UNACCEPTABLE INTERFERENCE TO OTHER STATIONS.**

As fully discussed in Independence’s/NBC Telemundo’s Joint Application for Review, the Media Bureau implemented an unannounced change in the processing software used for its internal interference analyses, which was not made available on the FCC’s website until June 14, 2005, long after the deadline for the first round channel election. The Bureau applied this new processing software in reaching the conclusion that WYBE operating digitally on channel 35 would cause unacceptable interference to two stations, WDCA, Washington, D.C., and WITF-TV, Harrisburg, Pennsylvania. In each case, however, the hypothetical interference is to an allotted digital channel that has not been chosen by the station in question. Rather, each station has chosen its NTSC channel as its final digital channel. Moreover, even if the Commission ultimately concludes that these two stations must operate post-transition on their assigned digital channels, the revised antenna pattern for WYBE submitted with the Joint Application for Review fully protects both channels, a fact which ABC does not dispute.<sup>17</sup>

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<sup>17</sup> Had the Commission published and announced its new software in advance of the round one elections, of course, the conflicts would have been avoided in the first instance. The parties should not now be penalized for the Commission’s failure to publicize this important change.

ABC now contends that the NCA should be rejected because WYBE operating digitally on channel 35 will cause unacceptable interference (ranging from 0.4 to 0.7 percent) to Station WVIT, New Britain, Connecticut,<sup>18</sup> which is commonly owned with WCAU and has elected its digital allotment (channel 35) as its final digital channel. This argument should be rejected for three reasons. First, the FCC has already performed the necessary interference analyses and identified in the *Bureau Order* only two stations that would receive unacceptable levels of interference, both of which are fully protected by WYBE's revised antenna pattern. The FCC has posted on its website the results of this analysis and has concluded that the percentage of new interference caused to WVIT by the *original* WYBE proposal is only 0.13 percent, not the 0.4-0.7 percent predicted by ABC.<sup>19</sup> This conclusion is confirmed in the Engineering Statement of Hammett & Edison, Inc. attached hereto ("H&E Engineering Statement"). Accordingly, the percentages set forth in ABC's engineering analysis are incorrect and should be disregarded. In any event, it is apparent that the *Bureau Order* did not identify WVIT as an affected station because the amount of new interference is *de minimis* and, when rounded downward, complies with the threshold established by the Commission.

Second, even if the Commission had not already concluded that the 0.13 percent interference to WVIT is *de minimis*, other important policies weigh heavily in favor of accepting WYBE's technical proposal, as amended. The Commission has stated that, with regard to stations with allotted out-of-core DTV channels that elect their in-core NTSC channels, the Commission will permit the 0.1 percent additional interference limit to be exceeded in order to

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<sup>18</sup> Opposition at 11.

<sup>19</sup> The revised directional antenna pattern submitted for WYBE does not affect radiation toward WVIT and therefore does not create any additional interference to that station.

afford those stations an improved opportunity to select their NTSC channels.<sup>20</sup> According to the Commission, such allowance is justified because these stations have only one in-core channel to select and may need additional accommodation.<sup>21</sup> The instant case is even more extreme: One party to the NCA – NBC Telemundo – has no useable channels, while the other party – Independence – has elected to operate digitally on its NTSC channel in exchange for support that clearly serves the public interest by assisting a noncommercial broadcaster in making the digital transition. In contrast, ABC gave up a viable NTSC channel that would have allowed WPVI to replicate its certified digital coverage. Under these circumstances, the additional flexibility afforded to single-channel licensees should be accorded to Independence so that both WCAU and WYBE can be accommodated on their chosen digital channels.

Finally, ABC's argument that WYBE's proposed DTV operation on channel 35 will cause unacceptable interference to WVIT should be rejected because WVIT, also licensed to NBC Telemundo, has agreed to accept the additional *de minimis* interference, and the NCA is being amended accordingly.<sup>22</sup>

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<sup>20</sup> *Second Report and Order*, ¶ 56.

<sup>21</sup> *Id.*

<sup>22</sup> ABC's consulting engineer (but not ABC) made the additional argument (Opposition, Engineering Statement at 3) that WYBE's revised antenna pattern should be treated as an envelope pattern and that the actual pattern must be fully subsumed within this envelope pattern. This argument is wrong – WYBE should not be limited to a particular antenna pattern. Commission policy allows interference to be fungible. Accordingly, an antenna pattern that increases radiation (and interference) in one direction, but decreases radiation (and interference) in another, yielding no net increase in interference to a protected station, should also be acceptable. See H&E Engineering Statement at 2. Therefore, WYBE should retain the flexibility to install any antenna that satisfies the Commission's interference protection requirements.

## VI. CONCLUSION

For the foregoing reasons, the Commission should review and reverse the *Bureau Order*, clarify the “adverse impact” standard as suggested herein, approve the NCA between Independence and NBC Telemundo, and accept the proposed technical amendment filed by Independence.

Respectfully submitted,

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August 9, 2005

## CERTIFICATE OF SERVICE

I, Theresa Rollins, certify that on this 9<sup>th</sup> day of August 2005 I caused the foregoing Reply to Opposition to Joint Application for Review to be served by first-class mail, except where otherwise noted, on the following:

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## **TV Stations WCAU and WYBE • Philadelphia, Pennsylvania**

### **Statement of Hammett & Edison, Inc., Consulting Engineers**

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by NBC Telemundo License Company, licensee of TV Station WCAU, Channels N10 and D67, and by Independence Public Media of Philadelphia, Inc., licensee of TV Station WYBE, Channels N35 and D34, both Philadelphia, Pennsylvania, (“parties”) to prepare an engineering statement in support of a reply to the Opposition of ABC, Inc. to the Joint Application for Review in connection with a Negotiated Channel Agreement between the parties.

### **Background**

A Negotiated Channel Agreement (“NCA”) between WYBE, WCAU, and WNJU<sup>1</sup> proposed, among other things, that WCAU would operate its post-transition DTV facilities on Channel D34 and WYBE would operate its post-transition DTV facilities on Channel D35, using a directional antenna specified as part of the NCA. In its June 8, 2005, Report and Order,<sup>2</sup> the Commission rejected the NCA for various reasons, noting that, “... our engineering analysis indicates that Independence’s proposed digital operation on channel 35 would result in impermissible interference to the protected DTV channel for WDCA, channel 35 (0.3%) and WITF-TV, channel 36, Harrisburg, Pennsylvania (2.5%), stations which are not parties to the NCA.” On July 8, 2005, the licensees of WCAU and WYBE jointly filed an Application for Review seeking reconsideration and approval of the NCA. On July 25, 2005, ABC, Inc. filed an Opposition to the Joint Application for Review.

### **ABC, Inc. Relies Upon Incorrect Analysis and Irrelevant Results**

ABC’s engineering consultant, Carl T. Jones Corporation (“Jones”), relies upon interference evaluations using “tv\_process” software. For the past several years, tv\_process has been used by the Commission’s staff for evaluating so-called *de minimis* interference<sup>3</sup> by calculating reductions in the interference-free service population from a baseline value. For stations having multiple authorizations, allotments, and applications, the tv\_process software analyzes each of the possible permutations (called “scenarios”). However, neither this technique nor the tv\_process software were used by the Commission’s staff for evaluating channel conflicts. As noted in the engineering statement filed with the Joint Application for Review, the Commission is using new software, the existence of which was not made public prior to the Round One DTV Channel Election filing deadline, which re-computes the baseline population of protected stations where a DTV channel change is involved. In addition to recalculating the population baseline (upon which interference percentages are based), the new software also considers only changes in predicted interference, so

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<sup>1</sup> Linden, New Jersey, also licensed to NBC Telemundo.

<sup>2</sup> Report and Order, Docket 03-15, Released June 8, 2005, p. 5.

<sup>3</sup> See FCC Rules §73.623(c)(2).





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results obtained from tv\_process runs often will be incorrect and hence largely irrelevant in the context of evaluating channel conflicts.

Specifically, the results reported by Jones that, "... the interference [to WVIT, Channel 35, New Britain, Connecticut] ranges between 0.4% and 0.7% in each of 64 scenarios"<sup>1</sup> are clearly incorrect under the Commission's present method of channel conflict analysis. The only correct result is that obtained from the new software, evaluating one scenario, which uses the coverage certifications of the stations involved in the analysis. Using default engineering software parameters, the Commission calculated that result to be 0.13%.<sup>2</sup>

Additionally, Jones states that, "... tv\_process calculates that WYBE-DT operating under BLEDT-20030213AAD, 500 kW at 343 meters HAAT, presently serves between 8,848,369 and 8,903,315 persons." Again, the tv\_process results are irrelevant. The only relevant population coverage number is that published by the Commission in its Table II,<sup>3</sup> which is 5,848,870 persons (2000 U.S. Census). It is this population that WYBE-DT must cover in order to achieve the minimum service that a DTV station must provide under the build out requirements for stations that do not remain on their current DTV channel after the DTV transition ends.<sup>4</sup>

### Specified Antenna Pattern Envelope is Intended to be Illustrative

In its Joint Application for Review, the parties provided a directional antenna pattern envelope for WYBE-DT as Channel D35 that our calculations showed would adequately protect Stations WDCA-DT and WITF-TV (and all other stations that are not part of the NCA) from interference under the Commission's new analysis procedures. ABC, Inc. asks the Commission to limit WYBE-DT to this pattern envelope, such that "... any actual pattern must be fully subsumed within this envelope pattern."<sup>5</sup> Because Commission policy allows interference to be fungible,<sup>6</sup> however, there are other directional antenna patterns that may also satisfy the relevant interference protection requirements. That is, a pattern that increases radiation (and interference) in one direction, but decreases radiation (and interference) in another, yielding no net increase in interference to a protected station, should also be acceptable.

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<sup>1</sup> ABC, Inc., Opposition to Joint Application for Review, July 25, 2005, Engineering Statement, pp. 2-3.

<sup>2</sup> See [http://www.fcc.gov/oet/dtv/nca\\_round1.zip](http://www.fcc.gov/oet/dtv/nca_round1.zip) --> nca\_round1 Folder\nca\all\_analysis.txt Somewhat different results might be obtained by using more refined software parameters, but Jones does not suggest that such parameters were used. See Report and Order, MM Docket No. 00-39, released January 19, 2001, ¶66 and Public Notice No. 84889, August 10, 1998.

<sup>3</sup> FCC Public Notice DA 04-3922, Table II, "1998 Station NTSC and DTV Replication Information," released December 21, 2004

<sup>4</sup> *ibid.*

<sup>5</sup> Opposition, *op. cit.*, p. 3.

<sup>6</sup> Report and Order, MM Docket No. 00-39, Released January 19, 2001, ¶74.



## TV Stations WCAU and WYBE • Philadelphia, Pennsylvania

The pattern envelope included with the Joint Application for Review is hypothetical, and meant to be illustrative. Figure 1, attached, compares two “buildable” directional antenna patterns with the representative pattern envelope submitted with the Joint Application for Review. One pattern is an ERI Type ATW-P2, rotated toward 155°T. Although it increases radiation compared to the representative pattern along the arc from 222–264°T, there is sufficiently reduced radiation in other directions that our analysis shows that it would also comply with the Commission’s 0.1% interference allowance. The other pattern is a Dielectric Type DSB-G, rotated 30°T with a nulling dish (e.g., CSA-Mark Type 6A96G) oriented toward 300°T. Although this pattern has increased radiation along the arc from 228–252°T, there is sufficiently reduced radiation in other directions that our analysis similarly shows that it would comply with the Commission’s 0.1% interference allowance.

The two “buildable” directional antenna pattern alternatives shown in Figure 1 are calculated to provide WYBE-DT as Channel D35 with interference-free service to 7,705,727 and 8,028,325 persons, respectively, both of which greatly exceed the Table II minimum coverage requirement. The parties are working with antenna vendors to develop a satisfactory solution that provides both good coverage of the Philadelphia market and adequately protects nearby stations from interference. The Commission need should consider interference on a case-by-case basis, based upon the pattern submitted with the application, and should not limit WYBE-DT to a specific directional antenna pattern envelope.

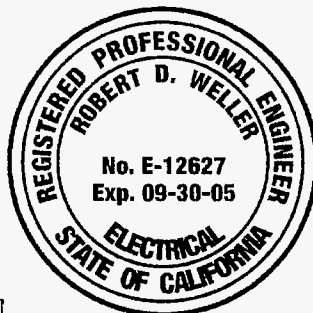
### Conclusion

The interference and coverage analyses offered by ABC, Inc. do not reflect present Commission policy or software, offer incorrect and irrelevant results, and should be ignored. WYBE-DT should not be limited to a particular directional antenna pattern envelope and should be permitted to install any antenna that satisfies the Commission’s interference protection requirements.

### List of Figures

In carrying out these engineering studies, the following attached figure was prepared under my direct supervision:

1. Two possible alternative directional antenna patterns.



/s/ **Robert D. Weller**

Robert D. Weller, P.E.

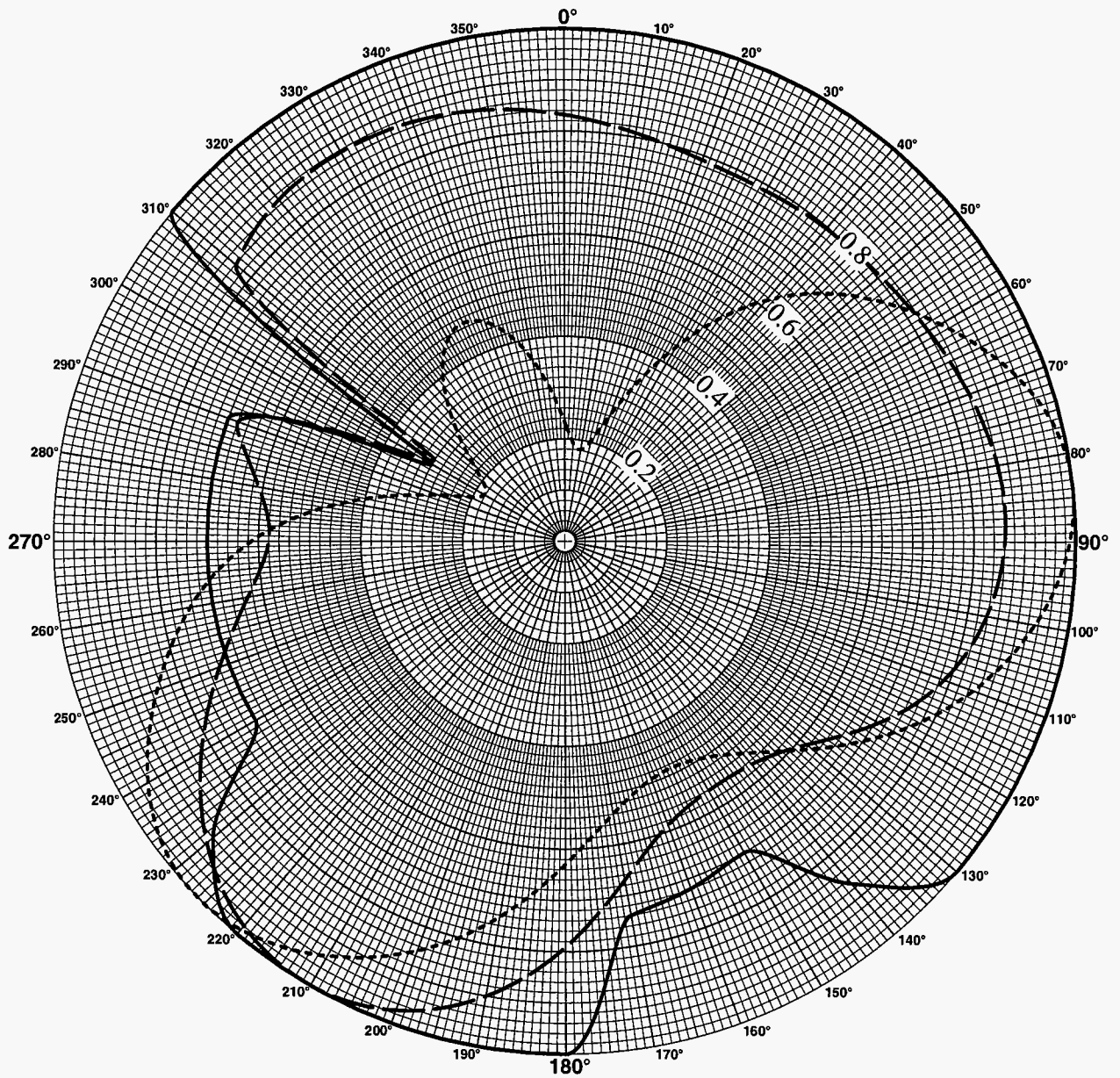
August 9, 2005



**HAMMETT & EDISON**  
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DTV Station WYBE-DT • As Channel D35 • Philadelphia, Pennsylvania

Proposed Directional Antenna  
Relative Field Pattern



Legend

- Pattern provided with July 8, 2005, Joint Application for Review
- - - - - ERI Type ATW-P2 @ 155°T
- · - · - Dielectric Type DSB-G @ 30°T with nulling dish



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Figure 1